RECENT LEGAL LITERATURE

A BRIEF SURVEY OF EQUITY JURISDICTION. By C. C. Langdell, Dane Professor of Law in Harvard University, Emeritus. Cambridge: The Harvard Law Review Association, 1905. pp. 303.

This volume is a collection of articles which have appeared from time to time in the *Harvard Law Review*. It covers the following subjects: Classification of Rights and Wrongs; Specific Performance; Bills for an Account; Bills of Equitable Assumpsit; Creditors' Bills; Real Obligations; and Equitable Conversion. It is needless to say that the learned author in the consideration of these subjects displays the research and grasp that characterize all of his work. The articles are essentially philosophical and critical in character, and demand for their full appreciation a fairly comprehensive knowledge of equity jurisdiction as a whole. The ordinary law student would probably get very little out of them, even if he could bring himself to a careful reading of them, if he should come to his task without a thorough elementary course in equity and such a knowledge of the law generally as a course in equity should presuppose. Indeed, it is doubtful if the ordinary practitioner would find much in the volume to challenge his attention. He would quite likely condemn it as too academic for his everyday purposes. But for the law teacher, the advanced student and the lawyer who is interested in the theoretical and scholarly side of the profession, the discussions must prove to be not only of great interest but full of fruitful suggestions.

Some of the distinctions made by the learned author would not probably receive the ready assent of the profession. Most equity practitioners, for instance, would undoubtedly agree that the criticism upon the use of the generally accepted term "specific performance" contained in the following paragraph, while logically accurate, is at least unusual and that it is difficult to see that it can serve any useful purpose: "It has been stated on a previous page that, while equity assumes jurisdiction over torts chiefly for the purpose of supplying a remedy by way of prevention, it assumes jurisdiction over contracts chiefly for the purpose of supplying a remedy by way of specific reparation. This latter remedy is indeed, constantly termed specific performance; but that is in strictness a misnomer. The remedy by way of prevention is the true specific performance; for the object of that remedy is to prevent a violation by the defendant of the plaintiff's right, and, whenever the remedy is successful, that object is completely accomplished. But to prevent a defendant from violating a plaintiff's right is to compel him specifically (i. e., strictly and literally) to perform his duty to the plaintiff. There is, indeed, this difference between the terms 'prevention' and 'specific performance,' namely, that the former is negative, while the latter is affirmative; and hence when equity enforces performance of a negative duty, the remedy is properly called prevention, while, if equity did in truth enforce performance of affirmative duties, the remedy would properly be called specific performance. But, in truth, equity does not attempt to enforce performance of affirmative duties, and therefore it does not attempt to enforce performance of

contracts, i. e., affirmative contracts. What is commonly called the specific performance of contracts is the doing of what was agreed to be done, but not at the time when it was agreed to be done; i. e., not till after the time when it was agreed to be done is past, and hence not till the contract is broken. In order to obtain strict performance of a contract, a bill would of course have to be filed before the time for performing the contract arrived; but in fact a bill will not lie (any more than action at law will lie) upon an affirmative contract until the contract is broken."

There is undoubtedly much to be said in favor of the author's criticism of the ordinary treatment of "Bills for an Account," yet the practitioner will be somewhat surprised when he reads that a bill filed for an accounting upon the theory that the transactions to be investigated are too complicated for consideration by a jury, is not a bill for an account at all, but is rather a "bill of equitable assumpsit." According to the author "a bill for an account," strictly speaking, is one founded upon an obligation to render an account, while a "bill of equitable assumpsit" is founded upon a debt, the jurisdiction of equity in case of the former bill arising out of the nature of the obligation sought to be enforced, and the fact of the absence of a remedy at law, and in case of the latter bill out of the "fact that the claim sought to be enforced is too complicated in its circumstances to be tried by a jury." The learned writer himself says that the term "Bills of Equitable Assumpsit" is "undoubtedly a novelty," but he is of the opinion that it is a novelty which can be "justified by the circumstances of the case." And this he proceeds to do in a thorough and logical manner, and in a way that carries conviction to the mind of the careful reader; yet the average practitioner and probably the average judge would fail to see any real necessity for the distinctions that are drawn.

But even though these articles, in some such particulars as those suggested, may not appeal to the profession generally, they must as a whole be recognized as a most valuable contribution upon the subject of equity jurisdiction. It is only by the constructive work of the original and independent thinker, such as this most certainly is, that the inconsistencies in our jurisprudence can be eliminated.

It seems to the writer to be unfortunate that this valuable contribution from Professor Langdell should be published in book form in its present somewhat incomplete condition and without revision and readjustment by the author. The book opens with an article on "Classification of Rights," which is followed by one on "Classification of Wrongs." Article nine upon "Classification of Rights and Wrongs," was written more than twelve years after the appearance of the other articles upon the same subject. In this article the author explains his then present views that in the interim had "undergone some modification and much development." Further, the articles upon "Equitable Conversion" are not strictly speaking upon that subject but are only introductory thereto, and were written, as the author himself says, simply for the purpose of clearing the way for the consideration of the subject proper. And the articles upon the subject proper are now current in the *Harvard Law Review*. It is a matter of regret that the publication of

the articles in book form could not have been withheld at least until all the articles upon this important subject could have been included.

It is needless to say perhaps that the value of this volume as a working tool would have been much enhanced by the addition of an index and a table of cases.

H. B. HUTCHINS.

HANDBOOK OF THE LAW OF INSURANCE. By William Reynolds Vance, Professor of Law in the George Washington University, Washington, D. C. St. Paul: West Publishing Company, 1904. pp. xiv, 683.

This volume is a recent addition to the well-known Hornbook series. It is an elaboration of the author's work of several years in teaching the law of insurance at Washington and Lee University. It is designed primarily for students and is prepared and arranged on lines adapted to the requirements of students rather than to those of practitioners.

The object of the author has not been to prepare an exhaustive treatise on the law of insurance but, as he declares in the preface, "to give a consistent statement of logically developed principles that underlie all contracts of insurance." No one would reasonably pretend to undertake more in a volume limited in plan and compass to correspond to companion volumes of the Hornbook Series, nor could any one reasonably expect more than the author has embodied in six hundred pages of text and notes. The limitations under which the author prepared his work—limitations of matter, scope and plan—necessarily made demands upon him of careful selection of matter and prudent rejection of whatever was unsuitable to the character of the work undertaken, conciseness of statement and discriminating elimination of a multitude of cases. The author has met these demands with ability and good judgment and, because he has done these things, he may feel well assured that the result of his labors will be useful to the practitioner as well as to the student and that he has "contributed something" toward elucidating the law of insurance, something to aid the student in his studies and something to lessen the labor of the practitioner.

After a careful examination of "Vance on the Law of Insurance" and after applying the best test the practitioner can apply—actual test of its merits in actual cases—the writer commends it to students and practitioners of the law.

One feature of the book merits special mention and that is the prominence given to leading cases by printing them in bold-faced type—thus enabling student and practitioner to tell by a glance at the notes what are the important cases on the particular phase of the subject under consideration. The writer is sure that this feature will lighten the work of student and practitioner in any special investigation he may have occasion to make.

ROBERT E. BUNKER.

THE LAW AND PRACTICE IN BANKRUPTCY UNDER THE NATIONAL BANKRUPTCY ACT OF 1898. By Wm. Miller Collier. Fifth and Revised Edition, With Amendments and Decisions to Date by Frank B. Gilbert. Albany: Matthew Bender & Company, 1905. pp. xlvi, 1038.

The first two editions of this work were edited by William Miller Collier and it has been the standard authority since the enactment of the present bankruptcy law.